

REMARKS/ARGUMENTS

In the Office Action mailed June 23, 2006, the Examiner rejected claims 1, 8, 10 and 17 under 35 U.S.C. § 102(b) as being anticipated by CA 2,396,317 Leduc et al. and rejected claim 9 under 35 U.S.C. § 103(a) as unpatentable over Leduc et al. in view of US 5,097,627 Roberts. In response, Applicant has amended claim 1, and has added new claim 18, and requests reconsideration and allowance of all claims for the reasons that follow.

1. Rejection of Claims 1, 8, 10 and 17 under 35 U.S.C. § 102(b)

The structure of the cylindrical drum disclosed in Leduc et al. is very different from that of Applicant and claim 1 has been amended to more clearly distinguish Applicant's structure. In Applicant's machine, the cylindrical shell has a circumferential surface which defines longitudinal slots. In Leduc et al., the plant-growing machine has elongated baskets 16 which have a gap 68 between the facing free edges of the baskets to allow plants to extend through the baskets (page 7, line 32 to page 8, line 3). The gap 68 (identified by the Examiner as a longitudinal slot) is on the radially inner side of the cylindrical structure and is for the purpose of permitting the radially inward growth of plants that are in the blocks of moss 88 placed in the baskets 16.

Importantly, in Applicant's machine, the longitudinal slots 110 extend right through the cylindrical shell and are accordingly open in both the radially outward and radially inward directions of the cylindrical shell. Claim 1 has been amended to so specify. Such feature is not present in Leduc et al. It will be apparent that this structure results in the containers being within the slots themselves, in contrast to the structure of Leduc et al., in which the blocks of moss are within the baskets 16, not within the gaps 68.

Further, in Applicant's machine, the slots are configured to allow slidable movement of the containers, and claim 1 has been amended to specify that such slidable movement is within the slots. Such feature is not present in Leduc et al. Although the gap 68 of Leduc et al.'s baskets 16 permits the plants themselves to move longitudinally through the gap as a block of moss 88 holding a plant is inserted at one end of the baskets (see page 16, lines 15 to 23), the gap 68 is not

configured for sliding movement of the blocks themselves. The blocks of moss fit within, and slide within, the baskets 16, not within the gap 68.

Leduc et al. accordingly does not disclose all the features of amended claim 1, so the claim is not anticipated by the cited reference.

The Examiner has also rejected claims 8, 10 and 17 as being anticipated by Leduc et al. Each of these claims depends directly or indirectly from claim 1 and includes its limitations. For at least that reason, these claims are not anticipated by Leduc et al.

New claim 18 has been added to further define the invention. It specifies that the container extends radially outwardly from the cylindrical shell through the longitudinal slot. Such feature is disclosed in, for example, Figure 3 of the drawings.

II. Rejection of Claim 9 under 35 U.S.C. § 103(a)

The Examiner has rejected claim 9 as being unpatentable over Leduc et al. in view of Roberts. The Examiner cites Roberts for the feature of flanges that slide into openings of a plant-holding shell for sliding engagement of the containers.

Claim 9 depends indirectly from claim 1 and therefore includes its limitations. For the reasons set out above, amended claim 1 includes features that are not disclosed in Leduc et al. and, for at least that reason, claim 9 is not made obvious by a combination of Leduc et al. and Roberts.

Further, claim 9 requires that the longitudinal slots define an opening which allows insertion and removal of the outwardly-extending flanges of the plant-growing container. There would be no motivation whatever to modify the structure of Leduc et al. to provide such openings. In Leduc et al. the blocks of moss are slid in through the ends of the baskets. It would not be obvious to use containers having flanges to engage the walls 66 surrounding the gap 68 in the baskets, because the baskets are structured to hold the blocks of moss, by virtue of the baskets being C-channel shaped. That is, the basket is already shaped to hold the blocks (which do not have or need to have flanges) and the gap 68 simply permits the passage of plants. It would be pointless, and unobvious, to modify Leduc et al. to provide flanges on the blocks of moss and openings in

the gap 68 for such flanges, because the baskets of Leduc et al. hold the moss blocks and permit their removal and insertion without the need for such features.

Accordingly, Applicant submits that claim 9 is patentable over the cited references.

III. Claims 2-7 and 11-16

Claims 2-11 and 11-16 were withdrawn pursuant to the species election in the Amendment dated June 29, 2004 pending allowance of a generic claim. Applicant submits that claim 1 is generic to all of species I to IV identified by the Examiner and is allowable for the reasons discussed above.

Accordingly, Applicant submits that claims 2-7 and 11-16, which depend directly or indirectly from claim 1, are entitled to consideration as provided by 37 C.F.R. 1.141 and requests rejoinder of these claims.

IV. Conclusion

Applicant respectfully requests reconsideration and allowance of all claims in light of the foregoing submissions.

Respectfully submitted,

By:



David J. McGruder
Registration No. 32,375
tel: 604.669.3432 ext. 9040
fax: 604.681.4081
e-mail: dmcgruder@patentable.com

Vancouver, B.C.
CANADA